

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

RONNIE GILES,)	
)	
Plaintiff,)	
)	
vs.)	CAUSE NO. 3:06 CV 528-WKW
)	
MASTERBRAND CABINETS, INC.)	
)	
Defendant.)	

DEFENDANT'S OBJECTION TO PLAINTIFF'S MOTION TO QUASH

Defendant Masterbrand Cabinets, Inc. ("MBCI") respectfully submits the following response and objections to the Plaintiff's motion to quash.

1. MBCI issued a subpoena to Iris Hendrix of Area Realty, LLC to appear and testify at trial. Plaintiff then filed its motion to quash.
2. Rule 45(c) of the Federal Rules of Civil Procedure governs the protection of persons subject to subpoena. Yet none of the grounds listed in Rule 45(c) are cited in plaintiff's motion to quash and indeed none of them are applicable.
3. Plaintiff seeks to quash the Hendrix subpoena solely on the speculation that Hendrix can offer no relevant testimony. This is not a proper basis on which to quash the Hendrix subpoena.
4. Hendrix was never deposed in this matter and plaintiff cannot claim to know what her testimony will be nor reasonably ask the Court to pre-judge that unknown testimony as excludable on relevancy grounds.

5. Hendrix, as the principal of Area Realty, is expected to have information relevant to the real estate industry generally, the number of hours plaintiff worked through Area Realty, the volume of that work, what other work was available and the compensation for work performed.

6. As such, MBCI expects that Hendrix will have information relevant to the issue of damages including, but not limited to, whether suitable work was available and whether plaintiff made reasonable efforts to obtain that work. Ms. Hendrix may also be an impeachment witness.

7. MBCI should be afforded the opportunity to present Hendrix's testimony at trial. At that time, plaintiff is free to present its objections as to relevancy or any other grounds to the Court for a ruling.

8. With respect to the issue of mitigation of damages and set off, MBCI incorporates herein its response to plaintiff's motion in limine on the issue of the Area Realty income and related evidence.

WHEREFORE MBCI respectfully requests that plaintiff's motion to quash be denied and for all other appropriate relief.

Respectfully submitted,

s/Kelley Bertoux Creveling
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CERTIFICATE OF SERVICE

I certify that on August 16, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following party by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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